

JAN 26 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID TRUJILLO,

Defendant - Appellant.

No. 06-50690

D.C. No. CR-05-00124-DOC-17

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted January 13, 2009^{**}

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

David Trujillo appeals from the 151-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute and distribute controlled substances, in violation of 21 U.S.C. § 846.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Trujillo’s counsel has filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. We have provided the appellant the opportunity to file a pro se supplemental brief. No pro se supplemental brief or answering brief has been filed.

Trujillo conditionally waived the right to appeal his sentence, with the exception of the district court’s determination of his criminal history category and certain conditions of supervised release. Our independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 80-81 (1988), indicates that the appeal waiver is operative. Accordingly, we affirm with regard to the portion of Trujillo’s sentence encompassed by the appeal waiver.

With regard to the determination of Trujillo’s criminal history category, our independent review of the record discloses no arguable grounds for relief, and therefore we affirm.

With regard to the conditions of supervised release from which Trujillo retained the right to appeal, we affirm with the exception of the portion of Condition 8, on page two of the judgment, prohibiting Trujillo from associating with any member of a “disruptive group.” We remand to the district court for it to excise this portion of Condition 8 from Trujillo’s set of supervised release

conditions pursuant to *United States v. Soltero*, 510 F.3d 858, 867 (9th Cir. 2007) (per curiam).

Counsel's motion to withdraw is **GRANTED**.

AFFIRMED in part; REMANDED in part.